

DHA Procedures, Guidance, and Information (PGI)

DHA PGI 224 – PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

(Revised February 26, 2014)

224.1 – Protection of Individual Privacy

224.1-90 - Personally Identifiable Information (PII), Protected Health Information (PHI), and Federal Information Requirement

- (1) Procurement Directive – None
- (2) Overview – PGI 224.1-90 provides implementing language and DHA processes for compliance with requirements set forth in Federal Acquisition Regulation (FAR) Part 24 and Defense Federal Acquisition Regulation Supplement (DFARS) Part 224, pertaining to federal privacy and information laws, including the Health Insurance Portability Accountability Act (HIPAA) Privacy, Security and Breach Rules, 45 CFR Parts 160 and 164, as amended by 78 FR 5566 (Jan. 25, 2013), issued by the Department of Health and Human Services (HHS). This PGI provides standard language that shall be included in all purchased and non-purchased care solicitations and contracts where the contractor's performance involves access to PII/PHI (unless those solicitations and contracts incorporate the TRICARE Manuals in their entirety, in which case this PGI does not apply).
- (3) Implementation instructions for contracts that do not incorporate the TRICARE manuals:
 - a. Solicitations issued or contracts awarded after September 23, 2013, shall include this language if the contractor accesses PII/PHI for any purpose during the performance of the contract.
 - b. Contracts awarded or modified after January 25, 2013, should have incorporated the PII/PHI language into the contract not later than September 23, 2013.
 - c. Contracts awarded prior to January 25, 2013, and that have not been modified or renewed between March 26, 2013, and September 23, 2013, shall incorporate the PII/PHI language into the contract not later than September 23, 2014 (or, if earlier, the date of a change to the contract).
 - d. Those contracts that have incorporated less than all of the TRICARE Manuals must be reviewed to determine if the TRICARE Manual sections regarding PII/PHI are already incorporated. If not, then it should be determined if those TRICARE Manual sections or if this PGI language is better suited for that contract. The Defense Health Agency (DHA) Privacy and Civil Liberties Office (Privacy Office) may be consulted on these determinations. The TRICARE Manual sections are the following:

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- i. TRICARE Operations Manual (TOM) Chapter 1, Section 5, and Chapter 19, Section 3.
 - ii. TRICARE Systems Manual (TSM) Chapter 1, Section 1.1.
- (4) Contracting Officer (CO) shall review the “Decision Tree Matrix” (Attachment 1) to determine whether the contractor’s performance involves access to PII/PHI. If so, then the solicitation/contract action must incorporate by reference the language in Attachment 2. Incorporation by reference is accomplished by including the following provision in the solicitation/contract : “The contractor shall comply with the document entitled ‘Personally Identifiable Information (PII), Protected Health Information (PHI) and Federal Information Requirements,’ which is incorporated by reference in its entirety and available at <http://www.tricare.mil/tma/ams/downloads/atc/DHAPGI2241-90Atch2.pdf>
- a. Contracts awarded by the Contracts Operations Division (COD), and not utilizing another Department of Defense (DoD) or Non-DoD Agency contract, shall incorporate PII/PHI language in its entirety into the applicable section of the solicitation/contract.
 - b. For those solicitation/contract actions awarded by another DoD or Non-DoD Agency, on behalf of COD, the CO shall coordinate with the respective Agency CO to determine if their contract complies with the privacy compliance requirements addressed in the PGI, including the HIPAA Rules and DoD HIPAA Issuances.
 - c. The DoD / Non-DoD Agency making the award on behalf of COD:
 - i. The COD CO in coordination with the Agency CO shall determine which portions of the PII/PHI language of this PGI are applicable to the contract. If the Agency contract does not include the applicable portions, the CO shall request those portions be incorporated into solicitation/contract award. The CO may consult with the DHA Privacy Office to determine language to be incorporated.
 - d. The COD making the award using another DoD / Non-DoD Agency contract:
 - i. The COD CO in coordination with the Agency CO shall determine which portions of the PII/PHI language of this PGI are applicable to the contract. If the Agency contract does not include applicable portions, the CO shall incorporate those portions into the solicitation/contract. The CO may consult with the DHA Privacy Office to determine language for incorporation.

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Attachment 1: Decision Tree Matrix

Attachment 2: PII/PHI/HIPAA Language